

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:22-CR-647 RLW
	)	
DWAYNE KIMMINS,	)	
	)	
Defendant.	)	

**ORDER**

This matter is before the Court on the Report and Recommendation, Memorandum Opinion and Order of United States Magistrate Judge Shirley Padmore Mensah (“Report and Recommendation”) (ECF No. 82).

Defendant Dwayne Kimmins filed a Motion to Dismiss Count II of Indictment (ECF No. 50). In the Motion to Dismiss, without citing any legal authority, Defendant argues dismissal is warranted because “[a]t all times herein mentioned, Defendant did not possess, or have access, to the firearm in question based upon lack of ownership and only had an incidental relationship to the weapon stored on this premise by the owner.” (ECF No. 50.) The United States filed a Response in Opposition (ECF No. 75).

Pursuant to 28 U.S.C. § 636(b), this matter was referred to Judge Mensah, who filed the instant Report and Recommendation on August 8, 2023. Neither party submitted objections to the Report and Recommendation within the fourteen (14) day period allowed pursuant to 28 U.S.C. § 636(b)(1), which required that objections be filed by August 22, 2023. The Magistrate Judge recommends that Defendant Kimmins’ Motion to Dismiss Count II of the Indictment be denied.


After de novo review of Defendant’s Motion to Dismiss, the United States’ Response in Opposition, the Magistrate Judge’s Report and Recommendation, and the Court’s independent

review of relevant case law, this Court adopts the Magistrate Judge's recommendation in full. Defendant's Motion to Dismiss raises a factual challenge to the sufficiency of the Government's evidence in support of Count II. The Federal Rules of Criminal Procedure do "not allow for pre-trial determination of the sufficiency of the evidence." United States v. Ferro, 252 F.3d 964, 968 (8th Cir. 2001) (quoted case omitted).

Accordingly,

**IT IS HEREBY ORDERED** that the Report and Recommendation, Memorandum Opinion and Order of United States Magistrate Judge (ECF No. 82) is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

**IT IS FURTHER ORDERED** that Defendant Kimmins' Motion to Dismiss Count II of the Indictment (ECF No. 50) is **DENIED**.

  
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**RONNIE L. WHITE**  
**UNITED STATES DISTRICT JUDGE**

Dated this 25th day of August, 2023.